

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

<i>Application No.:</i>	10/720,856	}	
		}	
<i>Confirmation No.:</i>	5181	}	
		}	
<i>Art Unit:</i>	3691	}	
		}	
<i>Examiner:</i>	Akintola, Olabode	}	
		}	ELECTRONICALLY
<i>Application Title:</i>	CUSTOMER BILLING IN A	}	SUBMITTED ON:
	COMMUNICATIONS	}	
	NETWORK	}	MARCH 29, 2010
		}	
<i>First Named Applicant:</i>	Timothy Roberts	}	
		}	
<i>Filed:</i>	11/24/2003	}	
		}	
<i>Attorney Docket:</i>	920476-95165	}	

REASONS IN SUPPORT OF REQUEST FOR PRE-APPEAL CONFERENCE

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

Contemporaneously with the filing of a Notice of Appeal and Pre-Appeal Brief Request for Review, please consider the following:

Reasons, which begin on page 2.

REASONS

Appellants respectfully submit the following reasons in support of a contemporaneously filed Pre-Appeal Brief Request for Review. In the final Office Action dated November 27, 2009 (hereinafter “the Office Action”), each of pending claims 1-20 stands rejected as being unpatentable over Ferguson (U.S. Patent Number 5,819,092). Reconsideration of each of the rejected claims in light of the remarks presented herein is respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103(a)

Each of independent claims 1, 8, 11, 16, and 17 stands rejected as being unpatentable over Ferguson. Appellants respectfully traverse this rejection as improper because the Office Action failed to properly evaluate the scope and content of Ferguson. When properly evaluated, Ferguson fails to disclose or render obvious every element of independent claims 1, 8, 11, 16, and 17. In particular, Ferguson fails to disclose (i) determining a respective billing tariff and a network user from a set of rules and a packet address and (ii) use of a coupon representing an amount of credit as generally recited in the independent claims.

(i) Ferguson fails to disclose determining a respective billing tariff and a network user from a set of rules and each packet address

In particular regard to independent claim 1, the Examiner asserts that Ferguson teaches “determining, by the server, from said rules and each packet address, a respective billing tariff and a network user account to be debited for the transport of that packet (col. 30, lines 20-58, “*Levying Fees on Users*”).” However, nothing in this section of Ferguson relied on by the Examiner discloses the use of a “packet address” for determining a network user account to be debited. Rather, this section of Ferguson simply discusses different types of fee structures that may be used to levy fees on a user. However, none of the disclosed fee structures rely on a packet address of the transmitted packet. As such, no disclosed fee structure is selected, determined, or otherwise modified based, in part, on the packet address. Conversely, independent claim 1 requires determining a billing tariff based on a set of rules and a packet address, which identifies the provider of the goods, such that different content providers may charge different tariffs or tariff structures.

It should be appreciated that the system of Ferguson is quite different from the billing system disclosed in Appellants' application. Ferguson is directed to an online service development system including a single, central server hardware platform 100 on which is stored HTTP server software 101, HTTP Extension Software 103, and Server Service Repository 107. (Ferguson, Col. 7, line 58 – Col. 8, line 3). Developers may use an Online Service Development Tool 109 to design online services. (Ferguson, Col. 8, lines 4-14). In use, the single, central server hardware platform 100 distributes and controls the ecommerce accounting of the online services. (Col. 8, lines 15-53). That is, all of the services and accounting of the online service system of Ferguson are stored on and controlled by the server hardware platform 100 and are delivered only across the packet-based network 150. As such, there simply is no reason to use a packet address identifying the provider of the goods since there is a single, virtual provider in the system of Ferguson.

Conversely, Appellants' specification discloses a billing system in which a mobile terminal may access services located on separate servers or otherwise provided by separate entities. Additionally, such services are provided across a mobile wireless network and a packet-based network. In such a system, a central login procedure from which the user account information may be obtained or cross-referenced may not be achievable due to the disparate service providers. Additionally, each service provider may utilize a different tariff or tariff structure and, as such, identification of the source of the packet may be used to apply the correct tariff or tariff structure.

Ferguson, on the other hand, is simply silent as to how the network user account is to be debited for, for example, a purchase. That is, Appellants have found no disclosure in Ferguson wherein the determination of the network user account is discussed. In particular, Ferguson fails to disclose that such determination is made based on the packet address. Nor can it be said that Ferguson inherently teaches that the network user account to be debited is determined based on each packet address. "Inherency . . . may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Hansgirk v. Kemmer*, 102 F.2d 212, 40 U.S.P.Q. 665, 667 (C.C.P.A. 1939); *In re Oelrich and Divigard*, 666 F.2d 578, 212 U.S.P.Q. 323, 326 C.C.P.A. 1981). It cannot be said that the network user account must be determined based on the packet address. As such,

Ferguson does not inherently disclose such determination. Rather, in Ferguson, it is much more likely that the network user account is determined based on a log in procedure (e.g., user name, password, etc.).

Accordingly, for at least this reason, Ferguson fails to render independent claim 1 obvious. Additionally, the above arguments are equally applicable to independent claims 11, 16, and 17. In particular, for at least the reasons discussed above, Ferguson fails to disclose “a server communicatively coupled to the database, the server being configured to: determine from said rules and each packet address, a respective billing tariff and a network user account to be debited for the transport of that packet” as recited in claim 11, “determining from a set of rules and each packet address, a respective billing tariff and a network user account to be debited for the transport of that packet” as recited in claim 16, and “a packet analyzer for determining from said rules and each packet address, a respective billing tariff and a network user account to be debited or credited for the transport of that packet” as recited in claim 17.

(ii) Ferguson fails to disclose obtaining a coupon from an account database that represents an amount of credit

In particular regard to independent claim 1, the Examiner asserts that Ferguson teaches “obtaining, by the server, a coupon from an account database, representing an amount of credit (col. 31, lines 60 through col. 32, line 4, col. 18, lines 30-39).” Appellants respectfully disagree. Ferguson does disclose debiting and crediting a user’s account, but fails disclose use of a “coupon.” In this regard, the Examiner appears to be interpreting a “coupon” simply as a debit or credit. However, such an interpretation is overly broad and is without regard to the teaching of Appellants’ specification. As described in Appellants’ specification, use of the coupon facilitates the sale of services from multiple, disparate service providers (which Ferguson is not concerned with), charging of different rates depending on the contact (i.e., is the user simply browsing a website or downloading music), crediting of the provider (e.g., the provider is credited for the download but not the browsing), etc. As such, given the benefit of Appellants’ specification, one of ordinary skill in the art would understand a “coupon” as used in Appellants’ specification includes data or parameters in addition to the simple dollar amount of the credit/debit. For example, on page 10, lines 19-20, of Appellants’ specification, a “coupon” includes destination and source data. Ferguson simply fails to disclose use of such a coupon.

Additionally, Ferguson fails to offer any motivation for such use since the services offered in Ferguson originate from a central service provider, albeit different developers.

Accordingly, for at least this reason, Ferguson fails to render independent claim 1 obvious. Additionally, the above arguments are equally applicable to independent claims 8, 11, 16, and 17, each of which recite the use of a "coupon."

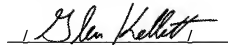
In view of the foregoing, Applicants respectfully submit that the Office Action has failed to properly determine the scope and content of Ferguson. Because the Office Action has failed to properly determine the scope and content of Ferguson, Applicants respectfully request that the 35 U.S.C. § 103(a) rejection of claims 1-20 be withdrawn for at least this reason.

CONCLUSION

For at least the above reasons, Appellants believe that each of pending claims 1-13 and 15-26 is in a condition for allowance and such action is respectfully requested. Additionally, Appellants understand that the pre-appeal review process has a limited scope. Appellants therefore hold in abeyance those arguments that are believed to be outside the scope of the pre-appeal review process without prejudice or admission made by the Examiner.

It is respectfully requested that this paper be considered as a petition for a one-month extension of time extending the deadline of this response to March 29, 2009 (March 27th falling on a weekend day). The Commissioner is hereby authorized to charge the fee of \$130.00 for this one-month extension of time, and any shortages fees, and credit any overpayment of fees, to the Deposit Account No. 14-1315 with reference to file 15184IDUS031.

Respectfully submitted,



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